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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,214	10/15/2003	Ivan Osorio	011738.00137	7258
70/467 7590 09/04/2008 BANNER & WITCOFF, LTD AND ATTORNEYS FOR CLIENT NUMBER 011738 10 SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606			EXAMINER MANUEL, GEORGE C	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 09/04/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/688,214

Applicant(s)

OSORIO ET AL.

Examiner

George Manuel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Appeal Brief

Applicant's arguments, see pages 8-16, filed 6/9/08, with respect to the rejection(s) of claim(s) 1-23 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Lundahl et al (US 6,223,071).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lundahl et al (US 6,223,071).

Lundahl et al disclose a medical device system that provides redundant back-up to ensure a treatment therapy is turned off comprising user controls including a main power switch 80 located on the back of the housing 30, and an on/off key switch 90 and

a timer 100, located on a side of the housing 30. The timer 100 includes an exposure time indicator 102 that displays the remaining treatment time.

The start/stop button 104 is a membrane switch that controls the tube operation; it toggles between the running and stopped states of the tubes and timer. After the exposure time has been set, depressing this button 104 activates the tubes and initiates the timer countdown sequence. Depressing it a second time turns off the tubes and stops the timer, thus providing a means for interrupting treatment if required. If the start/stop button 104 is not pressed a second time, the timer automatically turns off the tubes at the completion of the timer countdown. Treatment may also be terminated, if necessary, by rotating the key to the OFF position or by pushing the main power switch 80 to the "0" position.

A first component comprising on/off key switch 90 is capable of transmitting an ON command signal to activate delivery of the treatment therapy to a patient and an OFF command signal to terminate delivery of the treatment therapy to a patient.

A second component comprising start/stop button 104 and timer 100 is capable of receiving the ON command signal from the key switch 90 to enable delivery of a treatment therapy to the patient and is capable of receiving an OFF command to terminate delivery of the treatment therapy to the patient.

The cycle ON timer comprising timer 100 is activated in response to the second component receiving the ON command signal,

wherein the second component is also responsive to the cycle ON timer for causing termination of delivery of the treatment therapy in the event that the second component does not receive an OFF command from the first component for a period longer than a predetermined cycle ON time and during which time the treatment therapy is being delivered.

Regarding claim 4, the examiner is interpreting the electromagnetic radiation to comprise, electrical and magnetic stimulation treatment therapy.

Regarding claim 12, the examiner is interpreting the key switch 90 to be a component capable of being a physician programmer.

Regarding claim 13, the examiner is interpreting the first component to be an external device.

Regarding claim 14, the second component is capable of being a bedside device.

Regarding claim 15, the second component is capable of being an implanted device.

Regarding claim 16, the timer 100 comprises discrete logic for performing the steps of: (i) initiating the cycle ON timer to operate for the predetermined cycle ON time; (ii) determining whether the cycle ON timer has expired prior to receiving an OFF command; and (iii) if the cycle ON timer has expired prior to receiving the OFF command, turning off the treatment therapy regardless of whether the OFF command signal is received.

Regarding claims 2 and 17, the discrete logic of timer 100 is capable of performing the following additional steps: (iv) initiating a cycle OFF timer to operate for a predetermined cycle OFF time; and (v) preventing delivery of the treatment therapy until either the cycle OFF timer has expired or the OFF command is received when main power switch 80 is in the "0" position.

Regarding claims 3 and 18, the discrete logic is configured to perform the steps if the LED does flash three times after shutting off the power for several seconds and restarting it, reinitiating the cycle ON timer and delivering the treatment therapy to the patient; and (vii) if the OFF command for not using the unit is received, turning off the cycle OFF timer. The timer state is detected via the timer relay contacts in series with the ballast supply leads.

Regarding claims 6, 9 and 19-23, a fully programmable embedded microcontroller 200 is provided that incorporates an arithmetic logic unit, system RAM, non-volatile storage RAM, ROM and interface circuitry into a single monolithic

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integrated circuit which enables computer executable instructions within the second component for performing the steps.

In addition, the microcontroller 200 contains an electronically independent "watch-dog" timer circuit programmable to reset the CPU in the event of a microcontroller hardware failure or a firmware execution error. Firmware is programmed into ROM and verified using external programming hardware.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.

/George Manuel/
George Manuel
Primary Examiner
Art Unit: 3762

9/3/2008

/Angela D Sykes/

Supervisory Patent Examiner, Art Unit 3762